
SENATE COMMITTEE ON HUMAN SERVICES

Senator Hurtado, Chair

2021 - 2022 Regular

Bill No: AB 1720
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Version: March 7, 2022
Urgency: No
Consultant: Elizabeth Schmitt
Hearing Date: June 20, 2022
Fiscal: Yes

Subject: Care facilities: criminal background checks.

SUMMARY

This bill requires the Department of Social Services (CDSS) to process a simplified criminal record exemption for individuals who meet certain criteria and are seeking a license to operate, be employed by, or otherwise have contact with clients in a community care facility or be registered as a home care aide. This bill additionally removes the requirement for those individuals to sign a declaration under penalty of perjury regarding prior criminal convictions.

ABSTRACT

Existing Law:

- 1) Establishes the California Community Care Facilities Act, which provides regulatory structure for a coordinated and comprehensive statewide system of care for individuals with mental illnesses, individuals with disabilities, and children and adults who require care or services provided by licensed community care facilities. (*HSC 1500 et seq.*)
- 2) Defines “community care facility” as any facility, place, or building that is maintained and operated to provide nonmedical residential care, day treatment, adult day care, or foster family agency services for children, adults, or children and adults, and includes: residential facilities, adult day programs, foster family agencies, group homes, and children’s crisis residential programs, among others. (*HSC 1502 et seq.*)
- 3) Requires an individual to obtain either a criminal record clearance or a criminal record exemption from CDSS before their initial presence in a community care facility or certified family home, as specified. (*HSC 1522 et seq.*)
- 4) Establishes a regulatory structure for licensed residential care facilities for persons with chronic life-threatening illness that serve people who are 18 years of age or older or are emancipated minors and requires license holders to provide basic services for each resident, as specified. (*HSC 1568.01 et seq.*)

- 5) Requires an individual to obtain either a criminal record clearance or a criminal record exemption from CDSS before their initial presence in residential care facilities for persons with chronic life-threatening illness, as specified. *(HSC 1568.09 et seq.)*
- 6) Establishes the California Residential Care Facilities for the Elderly (RCFE) Act, which requires facilities that provide personal care and supervision, protective supervision, or health related services for persons 60 years of age or older who voluntarily choose to reside in those facilities to be licensed. *(HSC 1569 et seq.)*
- 7) Defines RCFE as a housing arrangement chosen voluntarily by individuals ages 60 and older, or their authorized representative, where care and services, as specified, are provided based upon individuals' varying needs, as determined, in order for them to be admitted and remain in the facility. *(HSC 1569.2(o)(l))*
- 8) Requires an individual to obtain either a criminal record clearance or a criminal record exemption from CDSS before their initial presence in a RCFE, as specified. *(HSC 1569.17 et seq.)*
- 9) Establishes the California Child Day Care Facilities Act to provide a comprehensive, quality system for licensing child day care facilities to ensure that working families have access to healthy and safe child care providers and that child care programs contribute positively to a child's emotional, cognitive, and educational development, and are able to respond to, and provide for, the unique characteristics and needs of children. *(HSC 1596.70 et seq.)*
- 10) Defines "child day care facility" to mean a facility that provides nonmedical care to children under 18 years of age in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis. Child day care facilities include day care centers, employer-sponsored childcare centers, and family day care homes. *(HSC 1596.750)*
- 11) Requires an individual to obtain either a criminal record clearance or a criminal record exemption from CDSS before their initial presence in a child day care facility, as specified. *(HSC 1596.871 et seq.)*
- 12) Defines "home care organization" to mean an adult individual or entity that arranges for home care services by an affiliated home care aide to a client and is licensed, as specified. *(HSC 1796.12(j))*
- 13) Defines "registered home care aide" as an affiliated home care aide or independent home care aide, 18 years of age or older, who is listed on the home care aide registry. *(HSC 1796.12(o))*
- 14) Requires individuals initiating a background examination to be a home care aide to be fingerprinted and submit a signed declaration under penalty of perjury regarding past criminal convictions to CDSS. *(HSC 1796.23)*

- 15) Requires an individual to obtain either a criminal record clearance or a criminal record exemption from CDSS before they may be listed on the home care aide registry. (*HSC 1796.24*)
- 16) Allows the Department of Justice (DOJ) to provide subsequent state or federal arrest or disposition notification to any entity authorized by state or federal law to receive state or federal summary criminal history information to assist in fulfilling employment, licensing, certification duties, or the duties of approving relative caregivers, nonrelative extended family members, and resource families upon the arrest or disposition of any person whose fingerprints are maintained on file at the DOJ or FBI as the result of an application for licensing, employment, certification, or approval. (*Penal Code [PEN] 11105.2(a)*)
- 17) Requires DOJ to notify CDSS within 14 calendar days of the criminal record information and, if no criminal information has been recorded, provide a statement of that fact. (*HSC 1522(c)(2)*)

This Bill:

- 1) Prohibits the CDSS from requiring that various individuals seeking a license to operate, be employed by, or otherwise have contact with clients in a community care facility, including residential care facilities for persons with chronic, life-threatening illness, Residential Care Facilities for the Elderly (RCFEs), and child daycare facilities, sign a declaration under penalty of perjury regarding any prior criminal convictions. Retains the requirement that those individuals be fingerprinted in order to obtain either a criminal record clearance or an exemption from CDSS prior to employment, residence, or initial presence in a community care facility.
- 2) Removes the requirement that a person initiating a background examination to be a registered home care aide signs a declaration under penalty of perjury regarding any prior criminal convictions. Retains the requirement that a person initiating a background examination to be a registered home care aide be fingerprinted in order to obtain either a criminal record clearance or an exemption from CDSS prior to becoming a registered home care aide.
- 3) Requires CDSS to process a simplified criminal record exemption for certain individuals, excluding individuals applying to operate a foster family home, certified family home, or be a resource family, as provided.
- 4) Requires CDSS to grant a simplified criminal record exemption if an individual meets all of the following criteria:
 - a) The individual does not have a demonstrated pattern of criminal activity, as defined by CDSS;
 - b) The individual has convictions arising from a single incident of criminal conduct;

- c) The individual's conviction(s) is a nonviolent misdemeanor and does not pose a risk of harm to a child or vulnerable individual, meaning harm that is probable, not just possible; and
 - d) At least five consecutive years have passed since the date of the convictions.
- 5) Requires CDSS to consider granting a simplified criminal record exemption if an individual meets all of the following criteria:
- a) The individual has convictions arising from five or fewer incidents of criminal conduct resulting in nonviolent misdemeanor convictions;
 - b) The individual has not been convicted of a crime within the last five years;
 - c) The individual has not been convicted of a felony; and
 - d) The individual has not been convicted of specified crimes deemed ineligible for exemption under existing law, as specified.
- 6) Allows CDSS to require, at its discretion, an individual who is otherwise eligible for a simplified exemption to complete the standard exemption process if CDSS determines that completing the standard exemption process will protect the health and safety of children and adults placed in community care facilities.
- 7) States that a simplified criminal record exemption granted according to these provisions does not relieve the person from compliance with other applicable screening provisions.
- 8) Makes other technical changes.

FISCAL IMPACT

According to an analysis prepared by the Assembly Committee on Appropriations, this bill would likely have the following fiscal impact:

- 1) Estimated ongoing General Fund costs to CDSS in the range of \$3 million to \$4 million annually, to support additional workload to assess the risk of harm to a child or vulnerable individual, as required by the bill. CDSS indicates this requirement would slow down the simplified exemption process significantly, adding to the workload of ordering law enforcement records for every case with criminal history.
- 2) Unknown, one-time costs to CDSS for increased workload to update necessary forms and procedures and to disseminate information regarding the changes to counties.

BACKGROUND AND DISCUSSION

Purpose of the Bill:

According to the author, “the Department of Social Services (CDSS) requires any applicant who has ever been convicted of any crime, other than a minor traffic violation, to obtain a criminal record ‘exemption’ from CDSS before they can work in a facility (i.e. community care, residential, elderly, child care). CDSS can and does deny exemptions based on conviction, even if the conviction is very old or unrelated to caregivers’ work, and even when applicants have shown success as caregivers. While ensuring the safety of the young and elderly should always be of utmost importance, the system CDSS uses is inefficient and has duplicative processes that can disadvantage good applicants, ultimately negatively affecting the caregiving system and those who depend on it. These overly burdensome criminal record screening rules, given the disproportionate rate of arrests and low-level criminal convictions in communities of color, cause people of color to have a difficult task in advancing in these caregiver roles without the proper licensing. The bill removes a duplicative process by prohibiting DSS from requiring applicants to disclose any information regarding their criminal history as a condition of employment.”

Community Care Licensing Division (CCLD)

CDSS’s Community Care Licensing Division (CCLD) licenses and oversees community care facilities—including child care facilities, foster family homes, and residential care facilities for the elderly—throughout California. These facilities typically provide non-medical care and supervision for children and adults in need, including individuals with disabilities, older adults in residential care, children in foster care, and children in child day care facilities. As of June 2021, there are 67,622 licensed community care facilities in the state with total capacity to serve approximately 1.4 million Californians.

All facilities licensed by CDSS must meet minimum licensing standards, as specified in California’s Health and Safety Code and Title 22 regulations. CDSS conducts pre- and post-licensing inspections for new facilities and unannounced visits to licensed facilities under a statutorily required timeframe.

Home Care Aide Registry

The Home Care Services Bureau (HCSB), under CDSS, is responsible for licensing home care organizations, including processing applications, receiving and responding to complaints, and conducting unannounced visits to ensure compliance. HCSB is also responsible for the home care aide application process and maintenance of the Home Care Aide Registry, which is a public online registry for home care aides who have been background checked. The Home Care Aide Registry is intended to promote consumer protection for older adults and individuals with disabilities who hire private aides to come into their homes and provide assistance with activities of daily living.

Criminal Background Checks

To protect the vulnerable populations served by CCLD-licensed facilities, state law requires all applicants, licensees, adult residents, volunteers under certain conditions, and employees of licensed facilities who have contact with clients, to be subject to a background check. These background checks are conducted by DOJ and used to determine whether individuals should be allowed to be present in a licensed facility. Registered home care aides are also subject to a background check.

If an individual has no history of arrests and convictions, a clearance notice is sent to CDSS. If an individual has a criminal history, a separate process will result in either a denial or exemption. When an individual has a criminal history, DOJ sends a transcript to CDSS showing the arrests and convictions of the individual. If the crimes are eligible for exemption under current law, CDSS will send an exemption notification letter to the applicant or licensee and to the individual. Individuals awaiting an exemption may not be present in a facility until an exemption is granted. If the criminal history shows arrests for crimes that may not be exempted, CDSS will deny the individual.

In the event that a previously cleared employee commits a crime resulting in a subsequent arrest that warrants revocation of his or her criminal record clearance or exemption, CCLD contacts the local regional office of the facility to determine the whereabouts of the employee for purposes of an on-site visit and/or notification and potential removal from the premises.

Criminal Record Exemptions

An exemption is a CDSS-authorized written document that "exempts" the individual from the requirement of having a criminal record clearance. CDSS is prohibited by law from granting exemptions to individuals convicted of certain "non-exemptible" crimes. Currently, there are 60 non-exemptible crimes, including murder, rape, torture, kidnapping, and crimes requiring sex offender registration. If an individual is convicted of a non-exemptible crime, that individual cannot work in any licensed facility or for a health care organization, and an individual's application will be denied or the license revoked based on the conviction. CDSS also has the authority and responsibility to investigate arrests to determine if the underlying conduct is substantiated and therefore presents a risk to the health and safety of clients who are in care.

When considering an exemption for individuals who have committed crimes that are exemptible, CDSS is required to consider a number of factors, including, but not limited to: the nature of the crime, including whether it involved violence; the period of time since the crime was committed and number of offenses; the circumstances surrounding the crime; activities since conviction, such as employment or participation in therapy or education; pardons granted; character references; a certificate of rehabilitation from a superior court; and, evidence of honesty and truthfulness. CDSS is also required to consider the individual's age at the time the crime was committed. CDSS also has the authority to grant a criminal record exemption that places conditions on the individual's continued licensure and employment or presence in a licensed facility.¹

¹ 22 CCR 80019.1

Standard and simplified exemption processes

Regulations establish criteria for CDSS to grant a criminal record exemption using either a standard exemption process or a simplified exemption process.² Pursuant to regulations, CDSS may consider granting a standard exemption for an individual who has not been convicted of any non-exemptible crime or violent felony, as defined, and who provides CDSS with substantial and convincing evidence of good character. Regulations further establish criteria for issuing a standard exemption based on the type of crime and length of time that has passed since the completion of incarceration, probation, or parole, as follows:

- The individual has been convicted of one nonviolent misdemeanor, and one year has lapsed since completing the most recent period of incarceration or probation.
- The individual has been convicted of two or more nonviolent misdemeanors and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
- The individual has been convicted of one or more violent misdemeanors and 15 consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
- The individual has been convicted of one nonviolent felony and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
- The individual has been convicted of two or more nonviolent felonies and ten consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
- The individual has not been convicted of a violent felony.

The above criteria establish conditions under which CDSS may consider granting a standard exemption to an individual; however CDSS is not required to process any standard exemption.

Under the simplified exemption process, CDSS is required to consider granting, but is not required to process, a simplified criminal record exemption only if the individual meets all of the following criteria:

- Does not have a demonstrated pattern of criminal activity;
- Has one or more convictions arising from a single incident of criminal conduct;
- Each conviction is a misdemeanor and is for a crime that is nonviolent and does not pose a risk of harm to an individual; and
- It has been at least five consecutive years since the date of the conviction.

CDSS is allowed to require an individual who is otherwise eligible for a simplified exemption to go through the standard exemption process if CDSS determines such action will help protect the health and safety of clients.³

This bill would codify criteria similar to the simplified criminal record exemption that currently exists in regulations. While regulations require CDSS to consider granting a simplified

² *Id.*

³ *Id.*

exemption for individuals who meet the simplified exemption criteria above, this bill would require CDSS to process a simplified exemption for an individual who meets all of the following criteria:

- Does not have a demonstrated pattern of criminal activity, as defined by CDSS.
- Has convictions arising from a single incident of criminal conduct.
- The conviction is a nonviolent misdemeanor and does not pose a risk of harm to a child or vulnerable individual, as defined.
- At least five consecutive years have passed since the date of the convictions.

In addition, this bill would establish a second set of criteria by which CDSS would be required to consider granting a simplified exemption, but would not be required to process a simplified exemption, for an individual who meets all of the following:

- Has convictions arising from five or fewer incidents of criminal conduct resulting in nonviolent misdemeanor convictions.
- Has not been convicted of a crime within the last five years.
- Has not been convicted of a felony.
- Has not been convicted of a non-exemptible crime, as defined.

This bill continues to allow CDSS to require an individual who is otherwise eligible for a simplified exemption to complete the standard exemption process if CDSS determines it will protect the health and safety of children and adults placed in community care facilities. This bill specifies that granting a simplified criminal record exemption does not relieve the person from complying with other applicable screening provisions, such as being fingerprinted.

The changes this bill makes to the simplified criminal record exemption process would apply to individuals seeking to operate, be employed by, or otherwise have contact with clients in community care facilities or those applying to be listed on the Home Care Aide Registry, but would not apply to individuals applying to operate a foster family home, certified family home, or be a resource family, as provided.

In addition, this bill removes the requirement that individuals seeking a license to operate, be employed by, or otherwise have contact with clients in a community care facility, or individuals applying to be registered home care aides, sign a declaration under penalty of perjury regarding any prior criminal convictions. This bill prohibits CDSS from requiring these individuals to disclose their criminal history information, but does not affect requirements that these individuals be fingerprinted as part of the background check process.

Related/Prior Legislation:

SB 354 (Skinner, Chapter 687, Statutes of 2021) adopted changes to the criminal background check process during the resource family approval (RFA) process for relatives of children placed in the child welfare system; permitted the court to authorize placement of children with relatives in certain circumstances, regardless of the status of any criminal exemption or RFA; and required CDSS to submit a report to the Legislature by January 1, 2024 related to specified criminal record exemptions.

AB 1608 (Holden, 2019), would have prohibited CDSS from requiring certain individuals subject to the criminal background check process to self-disclose their criminal history information, required CDSS to annually post certain data related to criminal record clearance and exemption approvals and denials on its website, and prohibited certain conduct from serving as the basis of a suspension or revocation of a license to operate a community care facility, or as the basis to prohibit an individual from serving in certain administrative capacities over a community care facility, unless certain circumstances exist. AB 1608 was not heard by this Committee.

AB 367 (Flora, 2019) would have included certain instances of spousal rape, pandering (not of a minor), and pimping (not of a minor), among the crimes for which a criminal background check exemption may not be granted. AB 367 was held in the Assembly Appropriations Committee.

AB 447 (Patterson, 2019) would have created a process by which licensees of certain facilities licensed by CCLD could transfer current criminal record clearances of individuals associated with a facility to multiple facilities of the same type operated by the same licensee. AB 447 was held in the Senate Appropriations Committee.

AB 3039 (Holden, 2018) would have made numerous changes to the criminal background check process for certain community care facilities, home care aide registry applicants, and home care organizations. AB 3039 was held in the Assembly Appropriations Committee.

SB 213 (Mitchell, Chapter 733, Statutes of 2017), streamlined the background check process for prospective and adoptive parents by establishing a list of non-exemptible crimes, a list of crimes for which an exemption may be granted, and a list of crimes for which exemptions must be granted, absent a reasonable belief that the person is not of good character at present.

SB 942 (Liu, 2016) would have required that criminal records checks be conducted within a specified timeframe, required various hearings if the county fails to meet those time frames, and authorized placement of a child in a home in which an exemption is pending under circumstances in which the county is found to have abused its discretion. SB 942 was held in the Assembly Appropriations Committee.

COMMENTS

CDSS expressed concerns with the requirement to provide a simplified exemption under certain circumstances and whether such a requirement would allow for adequate discretion for CDSS to further review a person's criminal history if necessary to ensure the health and safety of clients in care. As a result, CDSS worked with the author's office and has provided technical assistance. The amendments resulting from this technical assistance would allow CDSS to ask applicants for explanations of criminal history subsequent to receiving criminal background check results; give CDSS discretion to require a standard exemption if necessary; and codify a simplified exemption process which incorporates some components of the simplified exemption criteria under this bill. That criteria would allow, but not require, CDSS to grant a simplified exemption if the individual meets the following criteria:

- Has not been convicted of a violent crime;
- Has not been convicted of a crime within the last five years;

- Has not been convicted of a felony within the last 10 years;
- Has five or fewer misdemeanor convictions;
- Has no more than one felony conviction; and
- Has not been convicted of any non-exemptible crime.

The author has expressed a commitment to make amendments that reflect this technical assistance in the next committee, as legislative deadlines did not allow for the amendments to be processed by this committee.

Double-referral: This bill is double referred. Should it pass out of this committee, it will be re-referred to the Senate Committee on Public Safety.

PRIOR VOTES

Assembly Floor:	50-17
Assembly Appropriations Committee:	12-3
Assembly Human Services Committee:	7 - 0

POSITIONS

Support:

- Californians for Safety and Justice (Co-Sponsor)
- East Bay Community Law Center (Co-Sponsor)
- Root & Rebound (Co-Sponsor)
- A New Way of Life Reentry Project
- Alameda County Public Defender’s Office
- Community Legal Services in East Palo Alto
- Legal Services for Prisoners with Children
- National Association of Social Workers California Chapter
- National Employment Law Project
- Pillars of the Community

Oppose:

None received

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